

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION**

ST. FRANCIS HOSPITAL

Employer

and

MICHIGAN AFSCME COUNCIL #25

Petitioner

Case 30-UC-400

DECISION AND ORDER

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Based on an administrative investigation of the Petition, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The evidence reflects that the Petitioner has represented employees in a unit that included service and maintenance employees for at least 25 years. On March 8, 1996, the Petitioner was certified in Case 30-RC-5741 as the exclusive collective-bargaining representative of the employees in a bargaining unit of technical employees and licensed practical nurses. In subsequent bargaining the parties negotiated an agreement that covered service and maintenance employees and the newly certified employees in Case 30-RC-5741. The parties' current contract is effective June 1, 2002 to May 31, 2005.

3. The Petitioner proposed to clarify the bargaining unit as follows:

The Laboratory Aide position was recognized as a bargaining unit part-time position in May 1973 and was a bargaining unit position until July 1982, when the part-time employee was laid off and the position was permanently eliminated.

When the Laboratory Assistant position was created in October 1994, the bargaining unit leadership assumed that this was a dues paying position. The bargaining unit President was made aware that it was not a dues paying position in February 2003.

The Union requested to meet with the employer to discuss the position. The employer claims that this position is not a bargaining unit position because of educational requirements.

The Union requested that this position start to pay dues and be a part of the bargaining unit. The employer will not grant his request.

4. Clarification of the bargaining unit is not warranted inasmuch as the Laboratory Assistant position has been historically excluded from the bargaining unit during the terms of two contracts. Therefore, the position cannot be accreted to the bargaining unit by a unit clarification petition. *United Parcel Service*, 303 NLRB 326, 327 (1991).

Since the Employer openly posted the Laboratory Assistant job on seven occasions over a 4-year period, the job listing was excluded from the last two contracts, and the Employer submits a list of unit employee names with job classifications quarterly to the Union, it appears the Union did, or should reasonably have had, notice. It does not matter if the exclusion was due to agreement of the parties, oversight, mistake, or some other reason; it is the fact of historical exclusion that is determinative. *Robert Wood Johnson University Hospital*, 328 NLRB 912 (1999).

ORDER

The petition filed in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 10, 2003.

Signed at Milwaukee, Wisconsin this 26th day of June 2003.

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